

Exhibit G

JANET SIHLER, et al.,

Plaintiffs,

v.

GLOBAL E-TRADING, LLC DBA
CHARGEBACKS911, et al.

Defendants.

Proceedings in the United States District Court

Civil Action No.: 8:23-cv-01450-VMC-UAM

**MICROSOFT CORPORATION'S
OBJECTIONS TO SUBPOENA TO
PRODUCE DOCUMENTS,
INFORMATION, OR OBJECTS OR TO
PERMIT INSPECTION OF PREMISES IN
A CIVIL ACTION**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, nonparty Microsoft Corporation ("Microsoft") makes the following objections to the subpoena from Janet Sihler and Charlene Bavencoff ("Plaintiffs") in the above-referenced matter. Microsoft's objections and responses are based on its investigation to date. Microsoft expressly reserves the right to modify and supplement these objections and responses if additional information or documents are located by Microsoft. Microsoft assumes no obligation to supplement its responses, beyond those permitted by applicable court rules, if any. To the extent that a meet and confer regarding any of these objections is necessary, please contact undersigned counsel.

I. GENERAL OBJECTIONS

1. Improper Subpoena. Microsoft objects to the subpoena because it fails to state the court from which it was issued. *See* Fed. R. Civ. P. 45(a)(1)(A)(i). Microsoft also objects to

1 the subpoena because it fails to identify the issuing party. *See* Fed. R. Civ. P. 45(a)(3). Failure
2 to do so renders the subpoena invalid.

3 **2. Washington Shield Law.** Microsoft objects to the subpoena to the extent it
4 seeks records or information that Microsoft is barred from producing under [Engrossed](#)
5 [Substitute House Bill 1469, 2023 Reg. Sess. \(Wash. 2023\)](#) (the “Shield Law”). *See also* RCW
6 5.51.020. To comply with the requirements of the Shield law you must attest under penalty of
7 perjury that you are not seeking documents, information, testimony, or other assistance relating
8 to an investigation into, or the enforcement of, a law that asserts criminal or civil liability for
9 the provision, receipt, attempted provision or receipt, assistance in provision or receipt, or
10 attempted assistance in the provision or receipt of protected health care services that are lawful
11 in the state of Washington.

12 **3. Subscriber Notification.** Upon proper service of a nonparty subpoena seeking
13 business records, Microsoft implements basic procedures to attempt to locate and preserve the
14 information sought. If the subpoena requests subscriber information, Internet Protocol address
15 history logs, or similar associated data (collectively “Subscriber Data”), pursuant to industry
16 standard and court-approved practice, after locating the account and preserving the responsive
17 data, Microsoft notifies the subscriber of the subpoena and permits the subscriber a 14-day
18 period during which the subscriber may formally challenge or otherwise limit the subpoena
19 requests by making an appropriate motion before the relevant court. Upon expiration of the 14-
20 day waiting period, if the subscriber has failed to take timely action and if there are no valid
21 reasons for Microsoft to object to the subpoena, Subscriber Data, if available, is typically
22 produced, along with a document certifying its authenticity.

23 Following internal review and processing procedures, Microsoft initiates the processes
24 necessary to locate and preserve the data requested and, where active accounts are identified,
25 attempts to notify the subscriber(s) of your Subpoena and of the 14-day period to take
26 appropriate court action.

1 **4. Preservation of Content.** When content data is requested, Microsoft
 2 implements measures to electronically preserve content data pending pursuit of a court order or
 3 account holder consent. However, given the frailty of electronic data, Microsoft cannot
 4 guarantee that no data will be lost as a natural function of standard retrieval and preservation
 5 processes. Further, please note that Microsoft cannot preserve the data indefinitely in
 6 anticipation of further action. Unless Microsoft receives written notification of intent to pursue
 7 account holder consent for content data within 45 days of the date of this letter, Microsoft may
 8 permit the electronic mail content data preserved in response to your request to be deleted as a
 9 function of routine document maintenance.

10 As Microsoft is not a party to this matter and has no interest in its outcome, it is neither
 11 Microsoft's intent, nor its desire, to hinder or delay production of the documents requested by
 12 you. Microsoft has implemented the procedural requirements noted above in order to conform
 13 with what it believes to be proper under applicable local, state, and federal laws and public
 14 policies.

15 **5. Explanation of Inactive And NSU Status Determinations.** Typically all
 16 email content and Internet Protocol Log data associated with accounts that are affirmatively
 17 closed by their account holders, or with accounts that are left inactive for approximately 270
 18 days, are permanently deleted. The remaining "shell" account containing only the registration
 19 information provided by the subscriber is labeled "inactive." After an additional 95 days, the
 20 shell account is also permanently deleted, and the email address returned to the pool of
 21 available addresses.

22 **6. Deleted Messages.** Please be advised that contrary to what appears to be a
 23 popular conception, Microsoft does not maintain comprehensive archives of content sent from
 24 or received by any of its Skype, Outlook, MSN, or Hotmail service accounts. All
 25 communication content possessed by Microsoft with regard to any given user account consists
 26 only of those emails, messages, or recordings accessible to the account holder. Microsoft does
 27 not maintain a database of deleted emails, messages, recordings or audio.

1 **7. Contrary to the Electronic Communications Privacy Act.** Microsoft objects
 2 to the subpoena to the extent it seeks communications protected from disclosure by the
 3 Electronic Communications Privacy Act (“ECPA”), 18 U.S.C. §2510 to §2711, which prohibits
 4 the disclosure of communication data in electronic storage without the consent of the account
 5 holder. Microsoft falls within either the definition of a “person or entity providing an
 6 electronic communication service to the public” or “a person or entity providing remote
 7 computing service to the public.” 18 U.S.C. §2702(a), (b). The ECPA allows entities that
 8 provide electronic communication or remote computing services to the public to divulging
 9 communication data in electronic storage only in the case of the exemptions in 18 U.S.C.
 10 §2702(b). None of these exemptions appear to be applicable in this case. The exemptions
 11 under 18 U.S.C. §2702(b) do not authorize disclosure of electronic communications even in
 12 response to a civil subpoena or even a court order. The unauthorized disclosure of such content
 13 could subject Microsoft and you to serious civil and criminal penalties. 18 U.S.C. §2707.

14 We are not aware of any controlling authority holding that services such as Microsoft’s
 15 Services are permitted by the ECPA to disclose communication data in electronic storage in
 16 response to a civil subpoena. To the contrary, courts have ruled that contents of
 17 communications may not be disclosed to civil litigants even when presented with a civil
 18 subpoena. *O’Grady v. Superior Court*, 139 Cal.App.4th 1423, 1448 (Cal. App. 2006); *accord*
 19 The U.S. Internet Service Provider Association, *Electronic Evidence Compliance—A Guide for*
 20 *Internet Service Providers*, 18 BERKELEY TECH. L. J. 945, 965 (2003) ([No Stored
 21 Communications Act provision] “permits disclosure pursuant to a civil discovery order unless
 22 the order is obtained by a government entity. ... [T]he federal prohibition against divulging
 23 communication data remains stark, and there is no obvious exception for a civil discovery order
 24 on behalf of a private party.”); *see also Federal Trade Comm’n v. Netscape Communications*
 25 *Corp.*, 196 F.R.D. 559, 561 (N.D. Cal. 2000) (“There is no reason for the court to believe that
 26 Congress could not have specifically included discovery subpoenas in the statute had it meant
 27 to.”); *In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606 (E.D. Va. 2008)

1 ("Agreeing with the reasoning in O'Grady, this Court holds that State Farm's subpoena may not
 2 be enforced consistent with the plain language of the Privacy Act because the exceptions
 3 enumerated in § 2702(b) do not include civil discovery subpoenas."); *J.T. Shannon Lumber*
 4 *Co., Inc. v. Gilco Lumber Inc.*, 2008 WL 4755370 (N.D. Miss. 2008) (holding there is no
 5 "exception to the [SCA] for civil discovery or allow for coercion of defendants to allow such
 6 disclosure."); *Viacom Intern. Inc. v. Youtube Inc.*, 253 F.R.D. 256 (S.D.N.Y. 2008) ("ECPA §
 7 2702 contains no exception for disclosure of [the content of] communications pursuant to civil
 8 discovery requests.")

9 As you can understand, given the severity of the penalties under the ECPA, we cannot
 10 release email content in response to your subpoena without firm assurance that the
 11 requirements of the ECPA are met. Therefore, until we are provided with the valid, written
 12 consent of the account holder(s), we must object.

13 **8. Objection to Production of Material Subject to Foreign Data Privacy Law.**

14 Microsoft objects to the production of information sought by your subpoena to the extent it is
 15 subject to foreign data privacy laws. This includes without limitation EU Regulation 2016/679,
 16 the General Data Protection Regulation ("GDPR") or EU General Data Protection Regulation
 17 (Regulation (EU) 2016/679) as amended and transposed into the laws of the United Kingdom
 18 pursuant to the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal
 19 Agreement) Act 2020 ("UK GDPR"), or other foreign data privacy laws that might apply.

20 Microsoft is determining whether the data sought by your subpoena is subject to any such law;
 21 the process for making this determination takes approximately two weeks. Subject to, and
 22 without waiver of this objection, Microsoft may produce information responsive to your
 23 subpoena or that Microsoft determines is not subject to any such law and/or with the valid
 24 consent of the account holder.

25 **9. Electronically Stored Information.** Microsoft objects to the subpoena to the
 26 extent it seeks production of electronically stored information from sources not reasonably
 27 accessible (e.g., legacy systems, backup media, temporary or ambient data), in light of the bur-

dens or costs required to locate, restore, review, and produce whatever responsive information may be found. Known, difficult-to-access sources that may contain potentially responsive information (others may exist and become apparent once the scope of the information sought by the Subpoena is properly defined), but which Microsoft is neither searching nor producing because they are not reasonably accessible without undue burden, fall under the categories set out below: current disaster recovery media, obsolete back up media, legacy systems, sources requiring computer forensics to access, databases that are structured to hold or report information in certain formats and which cannot readily provide different data or data in different configurations, and source code. Microsoft is not able to retrieve information from many of these sources, or even confirm with certainty whether any responsive information in fact exists on the sources, without incurring substantial undue burden or cost.

10. Failure to Reduce Burden on Nonparty. Microsoft objects to the subpoena for failing to take reasonable efforts to reduce the burden on nonparty Microsoft. *See* Federal Rule of Civil Procedure 45(d)(1). In particular, Microsoft objects to the subpoena to the extent certain information sought is in the possession, custody, or control of the parties to the litigation. *See e.g., Rembrandt Patent Innovations v. Apple, Inc.*, 2015 WL 4393581, at *2 (W.D. Tex. July 15, 2015) (holding subpoena issued to non-party is unduly burdensome “until and unless Plaintiffs can establish they are unable to obtain the requested information from the Defendant”); *In re Allergan*, 2016 WL 5922717, at *9 (C.D. Cal. Sept. 23, 2016) (“Courts are particularly reluctant to require a non-party to provide discovery that can be produced by a party” (citation omitted)); *Nidec Corp. v. Victor Co. of Japan*, 249 F.R.D. 575, 577 (N.D. Cal. 2007) (“There is simply no reason to burden nonparties when the documents sought are in possession of the party defendant.”); *Moon v. SCP Pool Corp.* 232 F.R.D. 633, 638 (C.D. Cal. 2005) (“[T]hese requests all pertain to defendant, who is a party, and, thus, plaintiffs can more easily and inexpensively obtain the documents from defendant, rather than from [the] nonparty”) (citing *Dart Indus. Co. v. Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980)); *Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993) (affirming

denial of motion to compel production from nonparty, holding “the district court could properly require [defendant] to seek discovery from its party opponent before burdening the nonparty [] with [an] ancillary proceeding”). Obtaining records from a party also allows the parties to the litigation to directly address any confidentiality and privacy issues.

11. Timing of Compliance. Microsoft requires approximately eight weeks to process new requests for Subscriber Data. Accordingly, we ask that you extend the deadline of your subpoena to permit Microsoft to properly comply with its internal procedures. In the event that you do not agree, we must object to your subpoenas on the ground that it does not permit a reasonable time for response.

12. Prepayment of Costs. Microsoft requires the prepayment of its reasonable costs of complying with your subpoena before the production of documents. If prepayment is not remitted, Microsoft reserves the right to object to your subpoena and withhold the production of documents on the ground that the request is unduly costly and burdensome to Microsoft. Microsoft’s third-party fee schedule is available upon request.

13. Reservation of Rights. These objections apply to each request in the subpoena. Microsoft reserves its right to supplement, amend, correct, or modify its responses herein.

II. RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION

Microsoft incorporates the above objections in their entirety into each specific objection below. Microsoft’s specific objections are made for purposes of clarity and emphasis.

Microsoft does not waive its above objections with respect to any of the subpoena’s requests below. Microsoft will not produce documents without (1) prepayment of Microsoft’s reasonable costs for complying with the subpoena; and (2) an attestation that complies with Washington’s Shield Law.

Microsoft objects to these requests for failing to take reasonable efforts to reduce the burden on nonparty Microsoft. *See* Federal Rule of Civil Procedure 45(d)(1). In particular,

1 Microsoft objects to these requests to the extent the information sought is in the possession,
2 custody, or control of the account holder(s).

3 **REQUEST NO. 1:**

4 Copies of all Skype messages, documents, or communications between the account
5 "xcellent.choice" or any other Skype account associated with the subscriber for the account
6 "xcellent.choice"—i.e., David Flynn—and the Skype user Nicholas Carroll or the Skype
7 account "n.carroll_6" from January 1, 2019 through December 31, 2023.

8 **RESPONSE TO REQUEST NO. 1:**

9
10 Microsoft interprets this request as seeking content associated with the Skype accounts:
11 xcellent.choice and n.carroll_6. Microsoft objects to this request in that it seeks documents that
12 are not relevant, necessary, and proportional to the needs of the case and places a
13 disproportionate and undue burden on a third party because (1) the terms and phrases
14 “documents,” “David Flynn,” and “Skype user Nicholas Carroll” are vague and ambiguous; (2)
15 it seeks information more easily obtained from a party to the litigation or the account holders;
16 (3) it fails to take reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the
17 requests for “David Flynn,” and “Nicholas Carroll” fail to provide valid identifiers, clarifying
18 definitions or information necessary for Microsoft to conduct a reasonable search. Microsoft
19 cannot search for customer records by name, business name, or keyword.

20
21 Microsoft objects to this request as seeking content prohibited from disclosure by the
22 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
23 account holder. **Microsoft will not produce the content of electronic communications**
24 **absent verified account holder consent.**

25 Microsoft will not produce documents in response to this request.

26 **REQUEST NO. 2:**

1 Copies of all Skype messages, documents, or communications between the account
2 "xcellent.choice" or any other Skype account associated with the subscriber for the account
3 "xcellent.choice"—i. e., David Flynn—and the Skype user Johnny DeLuca from January 1,
4 2019 through December 31, 2023.

5 **RESPONSE TO REQUEST NO. 2:**

6 Microsoft interprets this request as seeking content associated with the Skype
7 account(s): xcellent.choice. Microsoft objects to this request in that it seeks documents that are
8 not relevant, necessary, and proportional to the needs of the case and places a disproportionate
9 and undue burden on a third party because (1) the terms and phrases “documents,” “David
10 Flynn,” and “Skype user Johnny DeLuca” are vague and ambiguous; (2) it seeks information
11 more easily obtained from a party to the litigation or the account holders; (3) it fails to take
12 reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the requests for “David
13 Flynn,” and “Johnny DeLuca” fail to provide valid identifiers, clarifying definitions or
14 information necessary for Microsoft to conduct a reasonable search. Microsoft cannot search
15 for customer records by name, business name, or keyword.

16
17 Microsoft objects to this request as seeking content prohibited from disclosure by the
18 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
19 account holder. **Microsoft will not produce the content of electronic communications**
20 **absent verified account holder consent.**

21
22 Microsoft will not produce documents in response to this request.

23 **REQUEST NO. 3:**

24 Copies of all Skype messages, documents, or communications between the account
25 "xcellent.choice" or any other Skype account associated with the subscriber for the account
26 "xcellent.choice"—i.e., David Flynn—and the Skype user Benjamin Scrancher a/k/a Ben
27

1 Scrancher or the Skype account "b.scrancher" from January 1, 2019 through December 31,
2 2023.

3 **RESPONSE TO REQUEST NO. 3:**

4 Microsoft interprets this request as seeking content associated with the Skype accounts:
5 xcellent.choice and b.scrancher. Microsoft objects to this request in that it seeks documents that
6 are not relevant, necessary, and proportional to the needs of the case and places a
7 disproportionate and undue burden on a third party because (1) the terms and phrases
8 "documents," "David Flynn," and "Skype user Benjamin Scrancher a/k/a Ben Scrancher" are
9 vague and ambiguous; (2) it seeks information more easily obtained from a party to the
10 litigation or the account holders; (3) it fails to take reasonable efforts to reduce the burden on
11 nonparty Microsoft; and (4) the requests for "David Flynn," and "Benjamin Scrancher a/k/a
12 Ben Scrancher" fail to provide valid identifiers, clarifying definitions or information necessary
13 for Microsoft to conduct a reasonable search. Microsoft cannot search for customer records by
14 name, business name, or keyword.
15

16 Microsoft objects to this request as seeking content prohibited from disclosure by the
17 Electronic Communications Privacy Act ("ECPA") without first obtaining consent from the
18 account holder. **Microsoft will not produce the content of electronic communications**
19 **absent verified account holder consent.**
20

21 Microsoft will not produce documents in response to this request.

22 **REQUEST NO. 4:**

23 Copies of all Skype messages, documents, or communications between the account
24 "xcellent.choice" or any other Skype account associated with the subscriber for the account
25 "xcellent.choice"—i. e., David Flynn—and the Skype user Meghan O'Donnell or the Skype
26 account "m.odonnell_19" from January 1, 2019 through December 31, 2023.
27

RESPONSE TO REQUEST NO. 4:

Microsoft interprets this request as seeking content associated with the Skype accounts: xcellent.choice and m.odonnell_19. Microsoft objects to this request in that it seeks documents that are not relevant, necessary, and proportional to the needs of the case and places a disproportionate and undue burden on a third party because (1) the terms and phrases “documents,” “David Flynn,” and “Skype user Meghan O'Donnell” are vague and ambiguous; (2) it seeks information more easily obtained from a party to the litigation or the account holders; (3) it fails to take reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the requests for “David Flynn,” and “Meghan O'Donnell” fail to provide valid identifiers, clarifying definitions or information necessary for Microsoft to conduct a reasonable search. Microsoft cannot search for customer records by name, business name, or keyword.

Microsoft objects to this request as seeking content prohibited from disclosure by the Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the account holder. **Microsoft will not produce the content of electronic communications absent verified account holder consent.**

Microsoft will not produce documents in response to this request.

REQUEST NO. 5:

Copies of all Skype messages, documents, or communications between the account "xcellent.choice" or any other Skype account associated with the subscriber for the account "xcellent.choice"—i.e., David Flynn—and the Skype account "m.jacula" from January 1, 2019 through December 31, 2023.

RESPONSE TO REQUEST NO. 5:

Microsoft interprets this request as seeking content associated with the Skype accounts: xcellent.choice and m.jacula. Microsoft objects to this request in that it seeks documents that

are not relevant, necessary, and proportional to the needs of the case and places a disproportionate and undue burden on a third party because (1) the terms and phrases “documents,” and “David Flynn” are vague and ambiguous; (2) it seeks information more easily obtained from a party to the litigation or the account holders; (3) it fails to take reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the request for “David Flynn” fails to provide valid identifiers, clarifying definitions or information necessary for Microsoft to conduct a reasonable search. Microsoft cannot search for customer records by name, business name, or keyword.

Microsoft objects to this request as seeking content prohibited from disclosure by the Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the account holder. **Microsoft will not produce the content of electronic communications absent verified account holder consent.**

Microsoft will not produce documents in response to this request.

REQUEST NO. 6:

Copies of all Skype messages, documents, or communications between the account "xcellent.choice" or any other Skype account associated with the subscriber for the account "xcellent.choice"—i.e., David Flynn—and the Skype user Melissa Flipski or the Skype account "melflipski" from January 1, 2019 through December 31, 2023.

RESPONSE TO REQUEST NO. 6:

Microsoft interprets this request as seeking content associated with the Skype accounts: xcellent.choice and melflipski. Microsoft objects to this request in that it seeks documents that are not relevant, necessary, and proportional to the needs of the case and places a disproportionate and undue burden on a third party because (1) the terms and phrases “documents,” “David Flynn,” and “Skype user Melissa Flipski” are vague and ambiguous; (2)

1 it seeks information more easily obtained from a party to the litigation or the account holders;
 2 (3) it fails to take reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the
 3 requests for “David Flynn,” and “Melissa Flipski” fail to provide valid identifiers, clarifying
 4 definitions or information necessary for Microsoft to conduct a reasonable search. Microsoft
 5 cannot search for customer records by name, business name, or keyword.

6
 7 Microsoft objects to this request as seeking content prohibited from disclosure by the
 8 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
 9 account holder. **Microsoft will not produce the content of electronic communications**
 10 **absent verified account holder consent.**

11 Microsoft will not produce documents in response to this request.

12 **REQUEST NO. 7:**

13 Copies of all Skype messages, documents, or communications between the account
 14 "xcellent.choice" or any other Skype account associated with the subscriber for the account
 15 "xcellent.choice"—i.e., David Flynn—and the Skype user Gary Cardone or the Skype account
 16 "gcardone1" from January 1, 2019 through December 31, 2023.

17 **RESPONSE TO REQUEST NO. 7:**

18
 19 Microsoft interprets this request as seeking content associated with the Skype accounts:
 20 xcellent.choice and gcardone1. Microsoft objects to this request in that it seeks documents that
 21 are not relevant, necessary, and proportional to the needs of the case and places a
 22 disproportionate and undue burden on a third party because (1) the terms and phrases
 23 “documents,” “David Flynn,” and “Skype user Gary Cardone” are vague and ambiguous; (2) it
 24 seeks information more easily obtained from a party to the litigation or the account holders; (3)
 25 it fails to take reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the
 26 requests for “David Flynn,” and “Gary Cardone” fail to provide valid identifiers, clarifying
 27

1 definitions or information necessary for Microsoft to conduct a reasonable search. Microsoft
2 cannot search for customer records by name, business name, or keyword.

3 Microsoft objects to this request as seeking content prohibited from disclosure by the
4 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
5 account holder. **Microsoft will not produce the content of electronic communications**
6 **absent verified account holder consent.**

7 Microsoft will not produce documents in response to this request.

8 **REQUEST NO. 8:**

9
10 Copies of all Skype messages, documents, or communications between the account
11 "xcellent.choice" or any other Skype account associated with the subscriber for the account
12 "xcellent.choice"—i.e., David Flynn and the Skype account(s) for subscriber Monica Eaton
13 a/k/a Monica Cardone from January 1, 2019 through December 31, 2023.

14 **RESPONSE TO REQUEST NO. 8:**

15 Microsoft interprets this request as seeking content associated with the Skype
16 account(s): xcellent.choice. Microsoft objects to this request in that it seeks documents that are
17 not relevant, necessary, and proportional to the needs of the case and places a disproportionate
18 and undue burden on a third party because (1) the terms and phrases “documents,” “David
19 Flynn,” and “Skype account(s) for subscriber Monica Eaton a/k/a Monica Cardone” are vague
20 and ambiguous; (2) it seeks information more easily obtained from a party to the litigation or
21 the account holders; (3) it fails to take reasonable efforts to reduce the burden on nonparty
22 Microsoft; and (4) the requests for “David Flynn,” and “Skype account(s) for subscriber
23 Monica Eaton a/k/a Monica Cardone” fail to provide valid identifiers, clarifying definitions or
24 information necessary for Microsoft to conduct a reasonable search. Microsoft cannot search
25 for customer records by name, business name, or keyword.
26
27

1 Microsoft objects to this request as seeking content prohibited from disclosure by the
2 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
3 account holder. **Microsoft will not produce the content of electronic communications**
4 **absent verified account holder consent.**

5 Microsoft will not produce documents in response to this request.

6 **REQUEST NO. 9:**

7
8 Copies of all Skype messages, documents, or communications between the account
9 "xcellent.choice" or any other Skype account associated with the subscriber for the account
10 "xcellent.choice"—i.e., David Flynn—and the Skype user Anthony Pugliese or the Skype
11 account "apugliese_12" from January 1, 2019 through December 31, 2023.

12 **RESPONSE TO REQUEST NO. 9:**

13 Microsoft interprets this request as seeking content associated with the Skype accounts:
14 xcellent.choice and apugliese_12. Microsoft objects to this request in that it seeks documents
15 that are not relevant, necessary, and proportional to the needs of the case and places a
16 disproportionate and undue burden on a third party because (1) the terms and phrases
17 “documents,” “David Flynn,” and “Skype user Anthony Pugliese” are vague and ambiguous;
18 (2) it seeks information more easily obtained from a party to the litigation or the account
19 holders; (3) it fails to take reasonable efforts to reduce the burden on nonparty Microsoft; and
20 (4) the requests for “David Flynn,” and “Anthony Pugliese” fail to provide valid identifiers,
21 clarifying definitions or information necessary for Microsoft to conduct a reasonable search.
22 Microsoft cannot search for customer records by name, business name, or keyword.

24 Microsoft objects to this request as seeking content prohibited from disclosure by the
25 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
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1 account holder. **Microsoft will not produce the content of electronic communications**
2 **absent verified account holder consent.**

3 Microsoft will not produce documents in response to this request.

4 **REQUEST NO. 10:**

5 Copies of all Skype messages, documents, or communications between the account
6 "xcellent.choice" or any other Skype account associated with the subscriber for the account
7 "xcellent.choice"—i. e., David Flynn—and the Skype user Brandon Figueroa or the Skype
8 account "brandontfigueroa" from January 1, 2019 through December 31, 2023.

9
10 **RESPONSE TO REQUEST NO. 10:**

11 Microsoft interprets this request as seeking content associated with the Skype accounts:
12 xcellent.choice and brandontfigueroa. Microsoft objects to this request in that it seeks
13 documents that are not relevant, necessary, and proportional to the needs of the case and places
14 a disproportionate and undue burden on a third party because (1) the terms and phrases
15 “documents,” “David Flynn,” and “Skype user Brandon Figueroa” are vague and ambiguous;
16 (2) it seeks information more easily obtained from a party to the litigation or the account
17 holders; (3) it fails to take reasonable efforts to reduce the burden on nonparty Microsoft; and
18 (4) the requests for “David Flynn,” and “Brandon Figueroa” fail to provide valid identifiers,
19 clarifying definitions or information necessary for Microsoft to conduct a reasonable search.
20 Microsoft cannot search for customer records by name, business name, or keyword.

21
22 Microsoft objects to this request as seeking content prohibited from disclosure by the
23 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
24 account holder. **Microsoft will not produce the content of electronic communications**
25 **absent verified account holder consent.**

26 Microsoft will not produce documents in response to this request.
27

REQUEST NO. 11:

Copies of all Skype messages, documents, or communications between the account "xcellent.choice" or any other Skype account associated with the subscriber for the account "xcellent.choice"—i.e., David Flynn—and the Skype user Aurora Marshall or the Skype account "a.marshall_ 24" from January 1, 2019 through December 31, 2023.

RESPONSE TO REQUEST NO. 11:

Microsoft interprets this request as seeking content associated with the Skype accounts: xcellent.choice and a.marshall_ 24. Microsoft objects to this request in that it seeks documents that are not relevant, necessary, and proportional to the needs of the case and places a disproportionate and undue burden on a third party because (1) the terms and phrases “documents,” “David Flynn,” and “Skype user Aurora Marshall” are vague and ambiguous; (2) it seeks information more easily obtained from a party to the litigation or the account holders; (3) it fails to take reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the requests for “David Flynn,” and “Aurora Marshall” fail to provide valid identifiers, clarifying definitions or information necessary for Microsoft to conduct a reasonable search. Microsoft cannot search for customer records by name, business name, or keyword.

Microsoft objects to this request as seeking content prohibited from disclosure by the Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the account holder. **Microsoft will not produce the content of electronic communications absent verified account holder consent.**

Microsoft will not produce documents in response to this request.

REQUEST NO. 12:

Copies of all Skype messages, documents, or communications between the account "xcellent.choice" or any other Skype account associated with the subscriber for the account

1 "xcellent.choice"—i.e., David Flynn—and the Skype account "instantlyfamous" from January
2 1, 2019 through December 31, 2023.

3 **RESPONSE TO REQUEST NO. 12:**

4 Microsoft interprets this request as seeking content associated with the Skype accounts:
5 xcellent.choice and instantlyfamous. Microsoft objects to this request in that it seeks documents
6 that are not relevant, necessary, and proportional to the needs of the case and places a
7 disproportionate and undue burden on a third party because (1) the terms and phrases
8 “documents,” and “David Flynn” are vague and ambiguous; (2) it seeks information more
9 easily obtained from a party to the litigation or the account holders; (3) it fails to take
10 reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the request for “David
11 Flynn” fails to provide valid identifiers, clarifying definitions or information necessary for
12 Microsoft to conduct a reasonable search. Microsoft cannot search for customer records by
13 name, business name, or keyword.
14

15 Microsoft objects to this request as seeking content prohibited from disclosure by the
16 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
17 account holder. **Microsoft will not produce the content of electronic communications**
18 **absent verified account holder consent.**
19

20 Microsoft will not produce documents in response to this request.

21 **REQUEST NO. 13:**

22 Copies of all Skype messages, documents, or communications between the account
23 "xcellent.choice" or any other Skype account associated with the subscriber for the account
24 "xcellent.choice"—i.e., David Flynn—and the Skype account "threecommaclub" from January
25 1, 2019 through December 31, 2023.

26 **RESPONSE TO REQUEST NO. 13:**

1 Microsoft interprets this request as seeking content associated with the Skype accounts:
2 xcellent.choice and threecommaclub. Microsoft objects to this request in that it seeks
3 documents that are not relevant, necessary, and proportional to the needs of the case and places
4 a disproportionate and undue burden on a third party because (1) the terms and phrases
5 “documents,” and “David Flynn” are vague and ambiguous; (2) it seeks information more
6 easily obtained from a party to the litigation or the account holders; (3) it fails to take
7 reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the request for “David
8 Flynn” fails to provide valid identifiers, clarifying definitions or information necessary for
9 Microsoft to conduct a reasonable search. Microsoft cannot search for customer records by
10 name, business name, or keyword.

12 Microsoft objects to this request as seeking content prohibited from disclosure by the
13 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
14 account holder. **Microsoft will not produce the content of electronic communications**
15 **absent verified account holder consent.**

16 Microsoft will not produce documents in response to this request.

17 **REQUEST NO. 14:**

18 Copies of all Skype messages, documents, or communications between the account
19 "xcellent.choice" or any other Skype account associated with the subscriber for the account
20 "xcellent.choice"—i.e., David Flynn—and the Skype account "thebigguy1978_1" from January
21 1, 2019 through December 31, 2023.

22 **RESPONSE TO REQUEST NO. 14:**

23 Microsoft interprets this request as seeking content associated with the Skype accounts:
24 xcellent.choice and thebigguy1978_1. Microsoft objects to this request in that it seeks
25 documents that are not relevant, necessary, and proportional to the needs of the case and places
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27

1 a disproportionate and undue burden on a third party because (1) the terms and phrases
 2 “documents,” and “David Flynn” are vague and ambiguous; (2) it seeks information more
 3 easily obtained from a party to the litigation or the account holders; (3) it fails to take
 4 reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the request for “David
 5 Flynn” fails to provide valid identifiers, clarifying definitions or information necessary for
 6 Microsoft to conduct a reasonable search. Microsoft cannot search for customer records by
 7 name, business name, or keyword.

8
 9 Microsoft objects to this request as seeking content prohibited from disclosure by the
 10 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
 11 account holder. **Microsoft will not produce the content of electronic communications**
 12 **absent verified account holder consent.**

13 Microsoft will not produce documents in response to this request.

14 **REQUEST NO. 15:**

15 Copies of all Skype messages, documents, or communications between the account
 16 "xcellent.choice" or any other Skype account associated with the subscriber for the account
 17 "xcellent.choice"—i.e., David Flynn—relating to MSwipe Americas from January 1, 2019
 18 through December 31, 2023.

19 **RESPONSE TO REQUEST NO. 15:**

20
 21 Microsoft interprets this request as seeking content associated with the Skype
 22 account(s): xcellent.choice. Microsoft objects to this request in that it seeks documents that are
 23 not relevant, necessary, and proportional to the needs of the case and places a disproportionate
 24 and undue burden on a third party because (1) the terms and phrases “documents,” “David
 25 Flynn,” and “relating to MSwipe Americas” are vague and ambiguous; (2) it seeks information
 26 more easily obtained from a party to the litigation or the account holders; (3) it fails to take
 27

1 reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the request for “David
2 Flynn” fails to provide valid identifiers, clarifying definitions or information necessary for
3 Microsoft to conduct a reasonable search. Microsoft cannot search for customer records by
4 name, business name, or keyword.

5 Microsoft objects to this request as seeking content prohibited from disclosure by the
6 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
7 account holder. **Microsoft will not produce the content of electronic communications**
8 **absent verified account holder consent.**

9 Microsoft will not produce documents in response to this request.

10 **REQUEST NO. 16:**

11
12 Copies of all Skype messages, documents, or communications between the account
13 "xcellent.choice" or any other Skype account associated with the subscriber for the account
14 "xcellent.choice"—i.e., David Flynn—relating to Brightree Holdings from January 1, 2019
15 through December 31, 2023.

16 **RESPONSE TO REQUEST NO. 16:**

17 Microsoft interprets this request as seeking content associated with the Skype
18 account(s): xcellent.choice. Microsoft objects to this request in that it seeks documents that are
19 not relevant, necessary, and proportional to the needs of the case and places a disproportionate
20 and undue burden on a third party because (1) the terms and phrases “documents,” “David
21 Flynn,” and “relating to Brightree Holdings” are vague and ambiguous; (2) it seeks information
22 more easily obtained from a party to the litigation or the account holders; (3) it fails to take
23 reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the request for “David
24 Flynn” fails to provide valid identifiers, clarifying definitions or information necessary for
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1 Microsoft to conduct a reasonable search. Microsoft cannot search for customer records by
2 name, business name, or keyword.

3 Microsoft objects to this request as seeking content prohibited from disclosure by the
4 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
5 account holder. **Microsoft will not produce the content of electronic communications**
6 **absent verified account holder consent.**

7 Microsoft will not produce documents in response to this request.

8 **REQUEST NO. 17:**

9
10 Copies of all Skype messages, documents, or communications between the account
11 "xcellent.choice" or any other Skype account associated with the subscriber for the account
12 "xcellent.choice"—i.e., David Flynn—relating to Beyond Global, Inc. from January 1, 2019
13 through December 31, 2023.

14 **RESPONSE TO REQUEST NO. 17:**

15 Microsoft interprets this request as seeking content associated with the Skype
16 account(s): xcellent.choice. Microsoft objects to this request in that it seeks documents that are
17 not relevant, necessary, and proportional to the needs of the case and places a disproportionate
18 and undue burden on a third party because (1) the terms and phrases “documents,” “David
19 Flynn,” and “relating to Beyond Global, Inc” are vague and ambiguous; (2) it seeks information
20 more easily obtained from a party to the litigation or the account holders; (3) it fails to take
21 reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the request for “David
22 Flynn” fails to provide valid identifiers, clarifying definitions or information necessary for
23 Microsoft to conduct a reasonable search. Microsoft cannot search for customer records by
24 name, business name, or keyword.
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1 Microsoft objects to this request as seeking content prohibited from disclosure by the
2 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
3 account holder. **Microsoft will not produce the content of electronic communications**
4 **absent verified account holder consent.**

5 Microsoft will not produce documents in response to this request.

6 **REQUEST NO. 18:**

7 Copies of all Skype messages, documents, or communications between the account
8 "xcellent.choice" or any other Skype account associated with the subscriber for the account
9 "xcellent.choice"—i.e., David Flynn—relating to BMOR Global, LLC from January 1, 2019
10 through December 31, 2023.

11 **RESPONSE TO REQUEST NO. 18:**

12 Microsoft interprets this request as seeking content associated with the Skype
13 account(s): xcellent.choice. Microsoft objects to this request in that it seeks documents that are
14 not relevant, necessary, and proportional to the needs of the case and places a disproportionate
15 and undue burden on a third party because (1) the terms and phrases “documents,” “David
16 Flynn,” and “relating to BMOR Global, LLC” are vague and ambiguous; (2) it seeks
17 information more easily obtained from a party to the litigation or the account holders; (3) it
18 fails to take reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the request
19 for “David Flynn” fails to provide valid identifiers, clarifying definitions or information
20 necessary for Microsoft to conduct a reasonable search. Microsoft cannot search for customer
21 records by name, business name, or keyword.

22 Microsoft objects to this request as seeking content prohibited from disclosure by the
23 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
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1 account holder. **Microsoft will not produce the content of electronic communications**
2 **absent verified account holder consent.**

3 Microsoft will not produce documents in response to this request.

4 **REQUEST NO. 19:**

5 Copies of all Skype messages, documents, or communications between the account
6 "xcellent.choice" or any other Skype account associated with the subscriber for the account
7 "xcellent.choice"—i.e., David Flynn—relating to Blue Hat Marketing from January 1, 2019
8 through December 31, 2023.

9
10 **RESPONSE TO REQUEST NO. 19:**

11 Microsoft interprets this request as seeking content associated with the Skype
12 account(s): xcellent.choice. Microsoft objects to this request in that it seeks documents that are
13 not relevant, necessary, and proportional to the needs of the case and places a disproportionate
14 and undue burden on a third party because (1) the terms and phrases “documents,” “David
15 Flynn,” and “relating to Blue Hat Marketing” are vague and ambiguous; (2) it seeks
16 information more easily obtained from a party to the litigation or the account holders; (3) it
17 fails to take reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the request
18 for “David Flynn” fails to provide valid identifiers, clarifying definitions or information
19 necessary for Microsoft to conduct a reasonable search. Microsoft cannot search for customer
20 records by name, business name, or keyword.

21
22 Microsoft objects to this request as seeking content prohibited from disclosure by the
23 Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the
24 account holder. **Microsoft will not produce the content of electronic communications**
25 **absent verified account holder consent.**

26 Microsoft will not produce documents in response to this request.
27

REQUEST NO. 20:

Copies of all Skype messages, documents, or communications between the account "xcellent.choice" or any other Skype account associated with the subscriber for the account "xcellent.choice"—i.e., David Flynn—relating to Chargebacks911 from January 1, 2019 through December 31, 2023.

RESPONSE TO REQUEST NO. 20:

Microsoft interprets this request as seeking content associated with the Skype account(s): xcellent.choice. Microsoft objects to this request in that it seeks documents that are not relevant, necessary, and proportional to the needs of the case and places a disproportionate and undue burden on a third party because (1) the terms and phrases “documents,” “David Flynn,” and “relating to Chargebacks911” are vague and ambiguous; (2) it seeks information more easily obtained from a party to the litigation or the account holders; (3) it fails to take reasonable efforts to reduce the burden on nonparty Microsoft; and (4) the request for “David Flynn” fails to provide valid identifiers, clarifying definitions or information necessary for Microsoft to conduct a reasonable search. Microsoft cannot search for customer records by name, business name, or keyword.

Microsoft objects to this request as seeking content prohibited from disclosure by the Electronic Communications Privacy Act (“ECPA”) without first obtaining consent from the account holder. **Microsoft will not produce the content of electronic communications absent verified account holder consent.**

Microsoft will not produce documents in response to this request.

1 DATED this 12th day of July, 2024.

2 DAVIS WRIGHT TREMAINE LLP
3 Attorneys for Microsoft Corporation

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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2024, I caused the foregoing document to be served by electronic mail to the following recipient(s):

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DATED this 12th day of July, 2024.

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